

201303361
Daniel Cross

On April 2, 2013, police were called to the scene of a fight in a at the Lucky Seven Tapas Bar in upper Manhattan. When PO Daniel Cross and others arrived, the club security had already separated the two men who had been fighting. PO Cross took custody of one man from club security and handcuffed him, then took him out of the club and to the precinct.

The man claimed that while being taken out of the club, PO Cross had pushed him into the doors of the vestibule, causing him to strike his head on the door. He also claimed that after he fell to the ground, PO Cross and other officers physically struck him.

PO Cross stated that at no point did he punch the man. He stated that at no point did he push the man. His explanation for the injury to the man's head (which required seven staples to close) was that while the man (who was in handcuffs) was being brought out of the vestibule, the man suddenly turned, as though to come at PO Cross, and the two men lost balance together and both fell to the ground.

Security video shows that while the man was being led out of the vestibule, he slowly turned his head back towards PO Cross. At that point, PO Cross grabbed the man with both hands and threw him against the door. The man then stumbled into the vestibule, where PO Cross and another officer pinned him to the wall, and then the officers brought him to the ground, where they are no longer visible to the camera.

The CCRB substantiated allegations of excessive force against PO Cross. PO Cross was tried in the Administrative Prosecution Unit. The man who was injured did not appear to testify at this trial, which took place two full years after the incident.

The administrative law judge, Jeff Adler, stated that he would not credit the man's testimony since he failed to appear, and that the video appeared to him to show the officer "continues to guide a resistant person towards the door, intent on getting his prisoner out of the bar as quickly as possible" when the man strikes the door. As to PO Cross's original statement, which was contradicted by the video, ALJ Adler credited PO Cross's testimony that he had not remembered key portions of the incident and that it was "only after IAB showed him video footage of the incident approximately two years later that his memory was refreshed."

Accordingly, ALJ Adler ruled that PO Cross was not guilty and the NYPD issued no discipline.

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Diana Murray	Team: Team # 2	CCRB Case #: 201303361	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Tue, 04/02/2013 3:13 AM	Location of Incident: [REDACTED]	Precinct: 34	18 Mo. SOL 10/02/2014	EO SOL 10/2/2014	
Date/Time CV Reported Fri, 04/19/2013 7:13 AM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Wed, 04/24/2013 4:19 PM		

Complainant/Victim	Type	Home Address
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]

Witness(es)	Home Address
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]

Subject Officer(s)	Shield	TaxID	Command
1. POM Daniel Cross	02635	§ 87(2)(b)	034 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. SGT Visar Marku	02735	§ 87(2)(b)	034 PCT
2. POF Devon Geraghty	05206	§ 87(2)(b)	034 PCT
3. POM Danny Shen	03537	§ 87(2)(b)	034 PCT
4. POM Yowell Rosario	14945	§ 87(2)(b)	034 PCT
5. POM Edwin Florez	22262	§ 87(2)(b)	034 PCT

Officer(s)	Allegation	Investigator Recommendation
A . POM Daniel Cross	Discourtesy: PO Daniel Cross spoke discourteously to § 87(2)(b).	A . § 87(2)(g)
B . POM Daniel Cross	Discourtesy: PO Daniel Cross spoke discourteously to § 87(2)(b).	B . § 87(2)(g)
C . POM Daniel Cross	Discourtesy: PO Daniel Cross spoke discourteously to § 87(2)(b).	C . § 87(2)(g)
D . POM Daniel Cross	Abuse of Authority: PO Daniel Cross threatened to arrest § 87(2)(b).	D . § 87(2)(g)
E . POM Daniel Cross	Abuse of Authority: PO Daniel Cross threatened § 87(2)(b) with the use of force.	E . § 87(2)(g)
F . POM Daniel Cross	Force: PO Daniel Cross used physical force against § 87(2)(b).	F . § 87(2)(g)
G . POM Daniel Cross	Other: PO Daniel Cross intentionally provided a false official statement to the CCRB when he denied using force against § 87(2)(b).	G . § 87(2)(g)

Case Summary

On April 19, 2013, Duty Captain Timothy McCoade contacted the Internal Affairs Bureau (IAB) via phone, generating IAB 13-16617, to report that § 87(2)(b) was injured while in police custody (Enc. 8a – 8d). On July 10, 2013, § 87(2)(b) filed a duplicate of this complaint via United States Postal mail while he was incarcerated on Rikers Island (Enc. 9a – 9b). This case was received at the CCRB on April 24, 2013 (Enc. 10a – 10b). On April 2, 2013, § 87(2)(b) was at § 87(2)(b) located at § 87(2)(b) in Manhattan, when the police arrived. The following allegations resulted:

- **Allegation A – Discourtesy – PO Daniel Cross spoke discourteously to § 87(2)(b)**
- **Allegation E – Abuse of Authority – PO Daniel Cross threatened § 87(2)(b) with the use of force.**
§ 87(2)(g)
§ 87(2)(g)
§ 87(2)(g)
- **Allegation B – Discourtesy – PO Daniel Cross spoke discourteously to § 87(2)(b)**
§ 87(2)(g)
§ 87(2)(g)
- **Allegation C – Discourtesy – PO Daniel Cross spoke discourteously to § 87(2)(b)**
- **Allegation D – Abuse of Authority – PO Daniel Cross threatened to arrest § 87(2)(b)**
§ 87(2)(g)
§ 87(2)(g)
§ 87(2)(g)
- **Allegation F – Force – PO Daniel Cross used physical force against § 87(2)(b)**
§ 87(2)(g)
§ 87(2)(g)
- **Allegation G – Other – PO Daniel Cross intentionally provided a false official statement to the CCRB when he denied using force against § 87(2)(b)**
§ 87(2)(g)
§ 87(2)(g)
§ 87(2)(g)

§ 87(2)(b)'s attorney, § 87(2)(b), withdrew this complaint on June 17, 2013. On November 14, 2013, § 87(2)(b) wrote a letter from Rikers Island requesting that his case be reopened (Enc. 11a – 11b). This case was not eligible for mediation.

Results of Investigation

Video Footage

Video footage from the interior and exterior of § 87(2)(b) was obtained from IAB (Enc. 12a – 12b). The video is not equipped with audio. The following salient points are noted:

- At 2:46 a.m., § 87(2)(b) engages in what appears to be a verbal dispute with two men, one of who was identified via investigation as § 87(2)(b) slams a bucket filled with beer bottles against the back of § 87(2)(b)'s head. Immediately thereafter, he throws a hookah at him, then another bucket filled with beer bottles. The bar's bouncers separate the parties and § 87(2)(b) is not observed to sustain any strikes by § 87(2)(b) or any object for the duration of the bar fight.
- § 87(2)(b) is restrained by security guards and minutes later, handcuffed by officers outside the frame of the footage. § 87(2)(b) identified via investigation, is seen standing close by.

- PO Cross begins to escort § 87(2)(b) from the restaurant. § 87(2)(b) approaches PO Cross and they appear to exchange words in an excited manner. As PO Cross escorts § 87(2)(b) into the vestibule, § 87(2)(b) slowly and slightly turns to face the direction in which PO Cross and § 87(2)(b) are standing. He makes no other movements. With both hands, PO Cross grabs § 87(2)(b)'s body, briskly walks him backward, and pushes him backward into the swinging door. § 87(2)(b) strikes the left side of his head against the door. He stumbles into the vestibule with PO Cross and Sgt. Marku. PO Cross then places § 87(2)(b) back-first against the wall and a brief struggle ensues in which § 87(2)(b) is taken to the ground or crouched near the ground. The video captures officers moving vigorously in the vestibule surrounded by civilians. The time stamp on the video and the vantage point of the camera obscure the specific actions taken in the physical struggle.
- For the duration of the encounter, numerous bar patrons are filing in out of the bar, some crowding around the police investigation.
- The back of § 87(2)(b)'s head is shown in the video footage both before and after his encounter with officers. No visible physical injuries or blood are seen in either stage.

Civilian Statements

Complainant/Victim: § 87(2)(b)

- § 87(2)(b)

Department of Correction Photo

§ 87(2)(b) was photographed by the New York City Department of Correction (DOC) following his April 2, 2013, arrest (Enc. 14a). The photo is blurry and does not depict any visible injuries. A DOC photo from a previous arrest was added to the case file for identification purposes (Enc. 14b). As noted in the Police Documents section, § 87(2)(b)'s arrest photo was unavailable to the CCRB.

Statements to Medical Personnel

On § 87(2)(b), § 87(2)(b) informed § 87(2)(b) personnel that he was "assaulted under arrest," and he did not know how he got the laceration on his scalp. He stated that he was drinking alcohol and had a fight with some guy in a bar. He was hit in the head and face with fists. He later informed medical personnel that he does not drink alcohol.

CCRB Statement

§ 87(2)(b) was interviewed at the § 87(2)(b) on Rikers Island on November 26, 2013 (Enc. 13a – 13f).

On April 2, 2013, at approximately midnight, § 87(2)(b) his girlfriend, § 87(2)(b) and their friends, § 87(2)(b) and an unknown woman, arrived at § 87(2)(b) located at § 87(2)(b) in Manhattan. Upon arriving, the unnamed security guard would not allow § 87(2)(b) to enter the bar, as he was wearing a full denim ensemble, which did not meet the dress code. § 87(2)(b) then spoke to the manager, § 87(2)(b) who allowed him entry into the bar.

While in the bar, § 87(2)(b) and his friends had dinner, drinks, and smoked hookah. § 87(2)(b) denied consuming alcohol or smoking hookah. At one point, § 87(2)(b) smelled marijuana and was immediately approached by the security staff who accused him of smoking marijuana. § 87(2)(b) let the security guards examine the hookah at their table and was subsequently left alone. § 87(2)(b) denied smoking or possessing marijuana at the time of this incident.

At approximately 3 a.m., § 87(2)(b) and his friends were sitting in the lounge area when they heard a commotion behind them. He heard glass breaking and people screaming. § 87(2)(b) was not

involved in the commotion, and did not throw any glass or engage in a fight with another patron. § 87(2)(b) stood up and was struck in the back of the head with an unknown object, causing him to fall back into his chair. He was immediately grabbed by the security staff. He was uncertain whether he sustained physical injuries at this time. Six security guards grabbed § 87(2)(b) and brought him over to the side of the bar where they placed him face down on the floor and held him there until police officers arrived. The security guards did not strike § 87(2)(b) and he did not try to get away from them.

Two uniformed officers, identified via investigation as PO Daniel Cross and Sgt. Visar Marku arrived at the location and immediately began placing § 87(2)(b) in handcuffs. § 87(2)(b) verbally protested his arrest but did not twist his body, flail his arms, or kick at an officer. PO Cross, who was described as a 6'2" tall, 180-pound white man with short blonde hair in his mid-30s, stated to § 87(2)(b) "Shut the fuck up and just sit there." Sgt. Marku was described as a 6'1" tall, 220-pound Hispanic man with black hair in his 30s. PO Cross was positioned on § 87(2)(b)'s left side and Sgt. Marku was on his right side.

§ 87(2)(b) approached the interaction, coming within five feet of the officers, and asked them what was going on. Her hands were full with her purse and § 87(2)(b)'s jacket, and she did not make any advances toward the officers or interfere with § 87(2)(b)'s arrest. At this point, § 87(2)(b) was face down on the ground with the officers on top of him. PO Cross yelled at § 87(2)(b) "Back the fuck up," and she immediately complied.

§ 87(2)(b) was unable to recall whether PO Cross or both officers escorted him from the building. In order to exit the bar, one would have to walk through a vestibule. The first door leading into the vestibule is composed of a double set of outward swinging Plexiglas doors. Beyond the Plexiglas doors is a very small vestibule leading to the final set of doors, which are partially composed of glass allowing one to see outside from the vestibule.

Upon approaching the first set of Plexiglas doors, PO Cross (or both officers, though PO § 87(2)(b) did not recall) pushed § 87(2)(b) into the door so that his body made contact with the door, causing it to swing open. The glass did not break but § 87(2)(b) sustained swelling and bruising to his forehead, and under his left eye near his nose. While in the small vestibule, § 87(2)(b) stopped walking and turned toward PO Cross. He stated, "Why would you do that?" and PO Cross responded, "Shut the fuck up." Immediately thereafter, PO Cross grabbed § 87(2)(b) by the back of his shirt and used one foot to sweep § 87(2)(b)'s feet out from under him. § 87(2)(b) fell backward onto the floor, landing on his back and hitting his head. He saw a flash of light and was stunned for a moment. § 87(2)(b) contended that he received the laceration to the back of his head from being slammed on the ground, and not from being hit with an object earlier in the night. Sgt. Marku did not assist PO Cross in slamming § 87(2)(b) to the ground.

§ 87(2)(b) attempted to sit up, but PO Cross immediately knelt down and punched § 87(2)(b) in the face, on his nose and mouth. § 87(2)(b) felt a second punch make contact with the right side of his face, but was uncertain whether it was wielded by PO Cross or Sgt. Marku. § 87(2)(b) was handcuffed at the time and did not struggle with the officers after being slammed to the ground. No officer issued § 87(2)(b) a verbal command such as "stop moving" or "stop resisting," and the only thing PO Cross said was, "Shut the fuck up, if you keep asking questions I am going to keep beating you up." The crowd from outside began yelling and filming the interaction once § 87(2)(b) was punched, though he has no knowledge of an existing video.

§ 87(2)(b) was lifted from the ground and escorted outside to a marked RMP sedan. As he was walking, his pants were falling down and he was unable to walk properly, so the officers stood on both sides of § 87(2)(b) and dragged him to the RMP. Once inside the RMP, the doors were shut and § 87(2)(b) could not hear the interaction occurring outside. He observed § 87(2)(b) approach PO Cross and they engaged in what appeared to be a heated discussion. He also observed a man who he did not know, but who was identified via investigation as § 87(2)(b) being escorted out of the bar in handcuffs. § 87(2)(b) denied engaging in a physical altercation with § 87(2)(b).

At the 34th Precinct stationhouse holding cells, § 87(2)(b) met § 87(2)(b) and was later informed by officers that § 87(2)(b) was also being charged with possession of marijuana because officers stated that they found a bag of marijuana five feet from where he was arrested. Emergency Medical Technicians (EMTs) arrived at the stationhouse, informed the officers that § 87(2)(b) had a severe head injury, and removed him to § 87(2)(b) via ambulance. He received seven staples to the back of his head.

Victim: § 87(2)(b)

- § 87(2)(b)

CCRB Phone Statement

§ 87(2)(b) provided a phone statement to the CCRB on December 9, 2013 (Enc. 16a).

At the time of this incident, § 87(2)(b) was being arrested and § 87(2)(b) approached the officers to ask them where § 87(2)(b) was being taken. An officer, who § 87(2)(b) identified as § 87(2)(b)'s arresting officer and who was identified via investigation as PO Cross, replied, "Shut up before you get arrested too," and, "Somebody grab this little bitch." § 87(2)(b) did not recall any additional profane statements made to her.

While in the vestibule entrance of the bar, PO Cross hit § 87(2)(b) in the face and/or head two to three times. § 87(2)(b) observed this from inside the bar through a glass door leading into the vestibule.

After providing the phone statement, § 87(2)(b) missed one appointment at the CCRB and contact attempts to reach her thereafter were unsuccessful.

Witness: § 87(2)(b)

- § 87(2)(b)

CCRB Phone Statement

§ 87(2)(b) provided a phone statement to the CCRB on December 2, 2013 (Enc. 15a).

At the time of this incident, § 87(2)(b) (who he is not related to) and § 87(2)(b)'s former girlfriend, who he declined to identify by name, were at § 87(2)(b) for dinner. Two men who § 87(2)(b) does not know were making sexual advances toward § 87(2)(b) and § 87(2)(b)'s former girlfriend. § 87(2)(b) and § 87(2)(b) exchanged some words with the two men, and sometime later, a glass bottle was thrown at § 87(2)(b)'s table. § 87(2)(b) did not see § 87(2)(b) throw anything at the two men.

When the officers arrived they immediately handcuffed § 87(2)(b). As they walked him out of the bar they stopped in the vestibule. § 87(2)(b) observed § 87(2)(b)'s interaction with officers from inside the bar, as he could see them clearly through the glass door that leads to the vestibule. He observed one officer hit § 87(2)(b) in the head or face with a closed fist, and was unable to recall how many times § 87(2)(b) was struck. The officers were saying that § 87(2)(b) was resisting arrest, but § 87(2)(b) did not see him try to thwart the officers' attempts to lead him from the bar.

§ 87(2)(b) approached the officers and one officer pressed his shoulder into her back and held her against a nearby wall. § 87(2)(b) did not recall any officer using profanity toward § 87(2)(b) or § 87(2)(b).

§ 87(2)(b) scheduled appointments at the CCRB for December 10, 2013, and January 7, 2014, but missed both appointments without calling ahead of time to cancel or reschedule. As of the writing of

this report, § 87(2)(b) has not attempted to schedule a third appointment. Therefore, a sworn witness statement could not be obtained from him.

Attempts to Contact Civilians

§ 87(2)(b) provided the name and phone number for § 87(2)(b) who he identified as an old friend and a potential witness to the incident involving police officers. On November 27, 2013, contact was established with § 87(2)(b) via phone and he denied witnessing any of the police misconduct allegations made by § 87(2)(b) however, he did acknowledge being at § 87(2)(b) at the same time as § 87(2)(b)

§ 87(2)(b) was identified via the Booking and Arraignment Disposition System (BADs) records as being arrested at the same time and place as § 87(2)(b). A Lexis Nexis search on April 30, 2013, yielded three contact numbers for § 87(2)(b) one of which was disconnected. Four messages were left for § 87(2)(b) with his confirmed family members at the second number. Two voicemails were left at the third number, and a notification of a disconnected phone line was received on the third attempt. Three please call letters were mailed to the address listed in § 87(2)(b)'s arrest report, and the letters have not been returned to the CCRB as of the writing of this report. IAB Sgt. Patrick Romain, who is also investigating the incident, informed the CCRB that § 87(2)(b) withdrew his IAB complaint.

§ 87(2)(b) The § 87(2)(b) at the time of the incident, identified via investigation as § 87(2)(b) no longer works at the bar. A search of Lexis Nexis by name failed to reveal additional contact information for § 87(2)(b) and he was therefore unable to be contacted for a witness statement.

NYPD Statements:

Subject Officer: PO DANIEL CROSS

- PO Cross § 87(2)(b) old at the time of this incident. He is a 6'8" tall, 228-pound white man with gray hair and blue eyes.
- PO Cross worked from 11:15 p.m. on April 1, 2013, to 7:50 a.m. on April 2, 2013, as an operator for Sgt. Visar Marku. Both officers were working in uniform and assigned to a marked SUV, RMP #5671.

Memo Book

At 3 a.m., PO Cross received a pick-up job of a dispute in front of § 87(2)(b) § 87(2)(b). At 3:13 a.m., two males were placed under arrest for § 87(2)(b), § 87(2)(a) CPL § 87(2)(b). Male 1 § 87(2)(b) who was wearing a white hoodie, blue jeans, and white sneakers) sustained a laceration to his forehead and back of his head from the altercation inside of the club. He did not have identification on him at the time of the arrest. Male 2 § 87(2)(b) who was wearing a black leather jacket, black t-shirt, blue jeans, and black sneakers) did not have identification on him at the time of this incident. At 3:20 a.m., PO Cross arrived at the 34th Precinct. At 4 a.m., § 87(2)(b) was removed to CPMC. At 4:30 a.m., Sgt. Marku contacted IAB in regard to the laceration to the back of the head. Additional notations were made regarding arrest processing (Enc. 17a – 17f).

Arrest Reports and Complaint Reports

PO Cross prepared the arrest reports and complaint reports for § 87(2)(b) and § 87(2)(b) (Enc. 18a – 18j). § 87(2)(b) was charged with § 87(2)(b), § 87(2)(a) CPL 160.50

§ 87(2)(b), § 87(2)(a) CPL 160.50 . § 87(2)(b) was arrested for § 87(2)(b), § 87(2)(a) CPL 160.50

§ 87(2)(b), § 87(2)(a) CPL 160.50

Supporting Deposition and Criminal Court Complaint

§ 87(2)(b), § 87(2)(a) CPL 160.50

CCRB Statement

PO Cross was interviewed at the CCRB on April 17, 2014 (Enc. 20a – 20e).

On April 1, 2013, at approximately 3 a.m., PO Cross and Sgt. Marku were patrolling near the intersection of § 87(2)(b), in Manhattan, when they were flagged down by bouncers who appeared to work at § 87(2)(b). The unidentified bouncers informed the officers that a dispute had taken place inside the club, and one man was continuing to act disorderly. PO Cross called for additional units over the radio, but did not wait for them to arrive prior to entering the bar.

PO Cross entered the bar through a small vestibule and immediately observed § 87(2)(b) who he identified by name, on the left side of the bar being held against the ground by unidentified bouncers. § 87(2)(b) was acting belligerent and was struggling with the bouncers, leading PO Cross to believe he was intoxicated. A second individual, who PO Cross identified as § 87(2)(b) was being held toward the back of the bar by one security guard. He appeared to be compliant.

Upon approaching § 87(2)(b) PO Cross did not notice any visible physical injuries or blood on § 87(2)(b). However, he noted the bar was very dimly lit. PO Cross instructed § 87(2)(b) to put his arms behind his back but he did not comply. PO Cross did not state, or hear any other officer state, “Shut the fuck up and just sit there.” PO Cross and Sgt. Marku handcuffed § 87(2)(b) who was flailing his arms. PO Cross and Sgt. Marku pulled on both of his arms and secured them behind his back. No additional force was used.

Patrons of the bar were still present but did not interfere. One woman, who PO Cross identified as § 87(2)(b) s girlfriend,” and who was identified via investigation as § 87(2)(b) was yelling at the officers but PO Cross was not paying attention to her. He did not recall her physically intervening, but she was closer than the other patrons. Once § 87(2)(b) was fully handcuffed, PO Cross instructed § 87(2)(b) to back up three to four times, but she did not immediately comply. PO Cross did not state to § 87(2)(b) “Back the fuck up,” and did not hear Sgt. Marku make this statement.

Once § 87(2)(b) was fully handcuffed, PO Cross and Sgt. Marku spoke to § 87(2)(b) and arrested him. While they were speaking to § 87(2)(b) began squirming on the floor and PO Cross observed that he had removed a bag of marijuana from the rear of his pants and discarded it on the ground.

PO Cross began to walk § 87(2)(b) out of the bar to the RMP. He held onto § 87(2)(b) who was rear handcuffed, and Sgt. Marku followed a couple paces behind them. § 87(2)(b) was loud and non-compliant when being walked out of the bar, as he was moving around a lot and screaming. § 87(2)(b) was also intoxicated which affected his gait and caused him to stumble. PO Cross denied pushing § 87(2)(b). During PO Cross' CCRB statement, the following exchange occurred in relation to the alleged push:

Inv Murray: Prior to him abruptly turning to face you, had you pushed § 87(2)(b) forward at any point?

PO Cross: I was walking him forward, escorting him out of the location.

Inv Murray: Okay, what about a *push* though?

PO Cross: I have no reason to push him if he is handcuffed.

Inv Murray: Okay, on this day did you push § 87(2)(b) forward?

PO Cross: No.

As they approached the vestibule, § 87(2)(b) abruptly turned to face PO Cross and PO Cross believed he was "coming at me." This caused PO Cross to lose his balance and stumble into § 87(2)(b). The men bumped into each other and fell against the glass door leading into the vestibule.

PO Cross was uncertain how § 87(2)(b) made contact with the door, but did not see him hit his head. PO Cross never intentionally pushed § 87(2)(b) into the door, and the trip was inadvertent. PO Cross and § 87(2)(b) never fell all the way to the ground, and § 87(2)(b) never hit his head on the ground. No physical force of any kind was used against § 87(2)(b) in the vestibule area. Only PO Cross, § 87(2)(b) and Sgt. Marku were in the vestibule at this time. Neither PO Cross nor Sgt. Marku punched § 87(2)(b). During his CCRB statement, the following exchange took place regarding the alleged punch:

Inv Murray: At any point in the vestibule, did you use your fist to strike § 87(2)(b) in the face?

PO Cross: Absolutely not.

Inv Murray: And did you see Sergeant Marku do this?

PO Cross: No.

Inv Murray: Okay, and now the trip sounds incidental, accidental – was any force – actual, intentional force used in the vestibule area?

PO Cross: No.

While leading § 87(2)(b) out of the bar, PO Cross never stated, "Shut the fuck up," or "Shut the fuck up, if you keep asking questions I am going to keep beating you up." PO Cross was unable to recall when he first viewed the laceration to the back of § 87(2)(b)'s head, but noted that the officers did not do anything to cause it and he believed he had sustained it from the bar fight.

PO Cross recalled the backup patrol sectors arriving within seconds of PO Cross and Sgt. Marku entering the bar. PO Danny Shen was inside of the bar at one point, but PO Cross did not recall what he was doing or how long he remained inside of the bar. He recalled seeing PO Devon Geraghty outside of the bar, but she did not enter the bar. PO Yowell § 87(2)(b) and PO Edwin Florez arrived at the location, but PO Cross was uncertain whether they entered the bar at any point. Aside from Sgt. Marku, no additional officers assisted PO Cross in handcuffing § 87(2)(b) removing him from the bar, and placing him into an RMP.

At the precinct, § 87(2)(b) stated “You didn’t have to beat the crap out of me” to PO Cross. § 87(2)(b) was making allegations that PO Cross threw him against the door. § 87(2)(b) was removed to the hospital for his injuries. Sgt. Marku contacted IAB and called the Duty Captain. While at the District Attorney’s office, a video statement was conducted with § 87(2)(b) at which time he confirmed that he had received the laceration during a bar fight.

Witness Officer: SGT. VISAR MARKU

- Sgt. Marku was § 87(2)(b) old at the time of this incident. He is a 6’1” tall, 210-pound white man with brown hair and hazel eyes.
- Sgt. Marku worked from 11:05 p.m. on April 1, 2013, to 8:52 a.m. on April 2, 2013, as a 34th Precinct Patrol Supervisor. He was working with PO Daniel Cross, in uniform, and assigned to a marked RMP, #5671.

Memo Book

At 3:10 a.m. Sgt. Marku picked up a job of a dispute fight in front of § 87(2)(b). A manager flagged down the RMP in regards to a fight inside. At 3:17 a.m., two individuals were placed under arrest at the location. PO Rosario and PO Florez transported one prisoner and PO Geraghty and PO Shen transported the other prisoner (Enc. 21a – 21d).

CCRB Statement

Sgt. Marku was interviewed at the CCRB on April 11, 2014 (Enc. 22a – 22e). § 87(2)(g)

At the time of this incident, Sgt. Marku and PO Cross entered § 87(2)(b) after calling for additional units to back them up. He did not wait for backup prior to entering the bar. Upon entering, Sgt. Marku noticed shards of glass on the ground and two to three security guards holding § 87(2)(b) against the ground. Sgt. Marku noticed that § 87(2)(b) had blood on his face and on the back of his head, but was uncertain of the location of his injuries.

Sgt. Marku and PO Cross approached § 87(2)(b) who was cursing and struggling with bouncers and emanating a scent of alcohol. They handcuffed him by pulling on his arms and did not use additional force. Sgt. Marku did not state or hear PO Cross state, “Shut the fuck up and just sit there.”

By the time § 87(2)(b) had been handcuffed, no additional units had arrived. No bar patrons interfered with § 87(2)(b)’s arrest. Sgt. Marku recalled that § 87(2)(b) was present, but he did not recall her actions during § 87(2)(b)’s arrest or whether she interfered. Sgt. Marku did not hear PO Cross state, “Back the fuck up,” to § 87(2)(b).

The backup officers arrived during the course of § 87(2)(b)’s arrest. § 87(2)(b) was compliant and both Sgt. Marku and PO Cross returned to § 87(2)(b). As PO Cross walked § 87(2)(b) out of the bar, Sgt. Marku followed a couple paces behind them. § 87(2)(b) was refusing to walk forward and he kept stopping, turning, and trying to horse-kick PO Cross. PO Cross and § 87(2)(b) ascended the steps that lead to a glass door and a vestibule. While entering the vestibule, PO Cross and § 87(2)(b) tripped. Sgt. Marku did not see PO Cross push § 87(2)(b) face first into the glass door in an attempt to get the door open, and he believed the trip to be inadvertent. PO Cross and § 87(2)(b) stumbled into the vestibule, and fell against either the door or the wall, though Sgt. Marku did not see where § 87(2)(b) made contact with the barrier, if at all. Neither PO Cross nor § 87(2)(b) fell to the ground once they tripped. Sgt. Marku never observed § 87(2)(b) fall backward and hit his head on the ground. Sgt. Marku did not see PO Cross use a police maneuver to get § 87(2)(b) to the ground.

Sgt. Marku entered the vestibule only after PO Cross and § 87(2)(b) stumbled, and there were no other individuals inside of the vestibule at this time. No officer punched § 87(2)(b) in the face during the incident, and no force was used against § 87(2)(b) in the vestibule area. Sgt. Marku did not hear PO Cross tell § 87(2)(b) to “Shut the fuck up,” and he did not make this statement himself. Sgt.

Marku assisted them in gaining their footing and walked them out of the vestibule. Sgt. Marku did not notice any additional injuries on § 87(2)(b) that were not observed upon his initial arrival. PO Cross did not state, “Shut the fuck up, if you keep asking questions, I am going to keep beating you up,” or any derivative of that statement. Sgt. Marku did not make these statements either.

§ 87(2)(b) had been walking with the officers as they were walking out of the bar with § 87(2)(b) and she kept getting in the way, but she was not present in the vestibule at the time of the trip. She then came outside and stood next to the RMP and began grabbing § 87(2)(b) while stating that she wanted to talk to him. Sgt. Marku recalled § 87(2)(b) being intoxicated as well, but was unable to recall specifics. At one point, he did tell § 87(2)(b) to backup, but he did not state, “Back the fuck up,” or use the word “fuck” in anyway. The backup officers never physically or verbally interacted with § 87(2)(b) or § 87(2)(b) to his knowledge.

Witness Officer: PO DANNY SHEN

- PO Shen was § 87(2)(b) old at the time of this incident. He is a 5’9” tall, 195-pound Asian man with black hair and brown eyes.
- PO Shen worked from 11:15 p.m. on April 1, 2013, to 7:50 a.m. on April 2, 2013, as Patrol Sector C with PO Devon Geraghty. Both officers were in uniform and assigned to a marked RMP, 4134.

Memo Book

At 3 a.m., a request for assistance was transmitted from § 87(2)(b) by the sergeant’s operator. At 3:05 a.m., PO Shen arrived at the location, and at 3:15 a.m., two individuals were placed under arrest by the sergeant’s operator. PO Shen transported one individual for the sergeant’s operator. At 3:45 a.m., he resumed patrol and arrived at the 34th Precinct stationhouse (Enc. 23a – 23c).

CCRB Statement

PO Shen was interviewed at the CCRB on May 2, 2014 (Enc. 24a – 24d).

At the time of this incident, PO Geraghty and PO Shen arrived at § 87(2)(b) after receiving a request for assistance from PO Cross, who was working as Sgt. Marku’s operator. He did not recall whether PO Florez and PO § 87(2)(b) were present for this incident.

PO Shen did not recall his initial observations upon seeing § 87(2)(b) such as whether he was handcuffed or injured, but he believed the request for assistance was no longer necessary. § 87(2)(b) was loud and appeared intoxicated. He did not hear PO Cross state to § 87(2)(b) “Shut the fuck up and just sit there.” He did not recall any patrons interfering with the police investigation.

Sgt. Marku exited the bar first and was followed by § 87(2)(b) who was being escorted by PO Cross. PO Shen walked behind everyone as they entered the vestibule to exit the bar. He was unable to recall where PO Geraghty was positioned. Once PO Shen entered the vestibule, his glove pouch on his utility belt got caught on the door handle and he was unable to walk forward.

Upon entering the vestibule, § 87(2)(b) made a sudden turn to face PO Cross. PO Shen did not recall whether § 87(2)(b) lurched forward or made any statements or threatening gestures. PO Cross positioned § 87(2)(b) who was rear-cuffed, with his back against the wall. He did not recall whether PO Cross made any statements at this time. PO Cross then struck § 87(2)(b) PO Shen did not recall whether PO Cross hit § 87(2)(b) with an open hand or closed fist, but he was certain it was with his hand. He made contact with the left side of § 87(2)(b)’s face, though he was unable to recall whether it was toward the top or bottom of his face. PO Shen did not recall § 87(2)(b) and PO Cross falling to the ground at any point, nor did he recall seeing § 87(2)(b) hit his head on the ground in the vestibule. Aside from the single strike, PO Shen was unable to recall any other mode of physical contact between the § 87(2)(b) and PO Cross. PO Shen did not recall how § 87(2)(b) reacted to being struck.

PO Shen did not recall whether he heard PO Cross state, “Shut the fuck up” or “Shut the fuck up, if you keep asking questions I am going to keep beating you up,” to § 87(2)(b) Sgt. Marku and PO Geraghty did not assist while in the vestibule, and Sgt. Marku never struck § 87(2)(b) PO Shen was also unable to assist, as his glove pouch was caught on the door handle for approximately one minute, which was the duration of the above physical struggle. He did not recall striking § 87(2)(b)

Medical Records

§ 87(2)(b) arrived at § 87(2)(b) on § 87(2)(b) via FDNY ambulance. He complained of a laceration to his scalp, head and lip pain. During his physical exam, medical personnel noted that he had scattered abrasions to his forehead, swelling to his upper lip, a one-centimeter laceration to his internal lip, and a two to three centimeter laceration to his occiput (rear skull). § 87(2)(b) received an unspecified amount of staples to close his scalp laceration.

NYPD Documents

SPRINT

SPRINT Report § 87(2)(b) was generated as a result of this incident (Enc. 27a – 27c). At 3:03 a.m. the report of this incident came over the radio as a general complaint. At 3:05 a.m., Sector 34D (PO Rosario and PO Florez) arrived at the location. At 3:12 a.m., Sector 34C (PO Geraghty and PO Shen) arrived at the location. Sector 34D reported that they would transport the prisoner for Sector 34C. 34ST1 (Sgt. Marku) arrived at the location at 3:19 a.m., and at 3:47 a.m., Sgt. Marku reported that he would take two individuals who were placed under arrest to the stationhouse.

Medical Treatment of Prisoner Report

A Medical Treatment of Prisoner Report was generated for the medical attention § 87(2)(b) received (Enc. 26a). § 87(2)(b) was removed to § 87(2)(b) where he was diagnosed with a contusion to his head that required five staples.

Command Log

The 34th Precinct command log noted that § 87(2)(b) and § 87(2)(b) arrived at the stationhouse at 3:20 a.m. (Enc. 28a). Both of their conditions were categorized as intoxicated, and it was noted that § 87(2)(b) had a laceration in the back of his head.

Property Vouchers

Property Voucher § 87(2)(b) noted that one bag of marijuana and two plastic bags were recovered by PO Cross and purportedly belonged to § 87(2)(b) (Enc. 29a – 29f). They were vouchered as arrest evidence and field tested, concluding that the substance was in fact marijuana.

Roll Call

The tour one roll call from April 2, 2013, lists Sgt. Marku as the Patrol Supervisor in RMP 5671 with his operator, PO Cross. PO § 87(2)(b) and PO Florez are assigned to Patrol Sector 34D, and PO Geraghty and PO Shen are assigned to Patrol Sector 34C (Enc. 30a – 30m).

Requests were made to the CCRB’s Monitoring and Analysis System (MAS) for the arrest photos taken of § 87(2)(b) and § 87(2)(b) (Enc. 40t – 40u). The requests were returned to the undersigned noting that the photos were unavailable.

Other Evidence

IAB Log

As previously noted, Captain McCoad generated the IAB log that resulted in the investigation of § 87(2)(b)'s complaint. In the log, Captain McCoad stated that he conferred with Sgt. Marku, who stated that only PO Cross escorted § 87(2)(b) from the building (pertaining to the force allegation in the vestibule).

Arrests for Incident and Disposition

- All criminal charges in connection with the incident on April 2, 2013, have been dismissed or sealed (Enc. 32a).

Status of Civil Proceedings

- § 87(2)(b) and § 87(2)(b) have not filed a Notice of Claim with the City of New York as of February 25, 2014, more than seven months after the 90-day filing deadline, in regard to the incident (Enc. 33a).

Civilians Criminal History

- As of March 7, 2014, Office of Court Administration records reveal no criminal convictions for § 87(2)(b) (Enc. 35a).
- § 87(2)(b)
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Civilians CCRB History

- This is the first CCRB complaint filed by § 87(2)(b) and § 87(2)(b) (Enc. 6a – 6b).

Subject Officer CCRB History

- PO Cross has been a member of the service for six years and there are no substantiated CCRB allegations against him (Enc. 5a – 5b).

Conclusion

Identification of Subject Officers

§ 87(2)(b) attributed all of the discourteous language and threat of force allegations to PO Cross, who he described as a 6'2" tall, 180-pound white man in his 30s with short blond hair. PO Cross, who is a § 87(2)(b)-old, 6'8" tall, 207-pound white man with blond hair, acknowledged his involvement with § 87(2)(b) was uncertain whether Sgt. Marku punched him, or if it was only PO Cross who punched him.

Allegations Not Pleaded

§ 87(2)(b) alleged that he was punched two times in the vestibule area, and that PO Cross punched him at least one time, but he was uncertain whether Sgt. Marku also punched him. Given that § 87(2)(b) could not certainly state who punched him the second time, both PO Cross and Sgt. Marku denied punching him, and Sgt. Marku was depicted in the video footage as being further away from § 87(2)(b) a force allegation has not been pleaded against Sgt. Marku.

Investigative Findings and Recommendations

Allegation A – Discourtesy – PO Daniel Cross spoke discourteously to § 87(2)(b)

Allegation E – Abuse of Authority – PO Daniel Cross threatened § 87(2)(b) with the use of force.

§ 87(2)(b) alleged that PO Cross stated to him, “Shut the fuck up and just sit there,” immediately upon interacting with him, “Shut the fuck up,” while entering the vestibule, and “Shut the fuck up, if you keep asking questions I am going to keep beating you up,” while in the vestibule. PO Cross denied using the aforementioned profanity and threats and Sgt. Marku denied hearing PO Cross make these statements. PO Shen was unable to recall the context of any verbal exchanges.

§ 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

Allegation B – Discourtesy – PO Cross spoke discourteously to § 87(2)(b)

§ 87(2)(b) alleged that PO Cross stated to § 87(2)(b) “Back the fuck up,” when she approached the police encounter. § 87(2)(b) did not corroborate this exact statement, but attributed other vulgarities to PO Cross. All officers interviewed denied making the statement, or hearing another officer make the statement, though PO Cross and Sgt. Marku corroboratively stated that they instructed § 87(2)(b) to back away from the police encounter. The video evidence shows a violent civilian assault in the bar, numerous bar patrons milling about, a sparse police presence, and what appears to be a brief, contentious exchange of words between PO Cross and § 87(2)(b).

An officer may use limited profanity where needed to gain compliance or maintain control during a stressful street encounter. NYPD v. Court, OATH Index No. 79627/04 (Enc. 1a – 1j).

The video footage and officer statements chronicle a boisterous, crowded scene inside of a bar after 2:30 a.m., immediately following a violent assault. Although § 87(2)(b) and § 87(2)(b) acknowledged that officers told § 87(2)(b) to back up – she is constantly seen in the video footage in the peripherals of the officers’ investigation, suggesting that she did not heed the instruction. § 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

Allegation C – Discourtesy – PO Daniel Cross spoke discourteously to § 87(2)(b)

Allegation D – Abuse of Authority – PO Daniel Cross threatened to arrest § 87(2)(b)

§ 87(2)(b) alleged that PO Cross stated to her, “Shut up before you get arrested too,” and, “Somebody grab this little bitch.” No other civilian party witnessed the alleged discourteous statement or threat of arrest, and § 87(2)(b) failed to cooperate with the investigation. § 87(2)(g)

§ 87(2)(b)

Allegation F – Force – PO Daniel Cross used physical force against § 87(2)(b)

Based on the video footage, it is undisputed that PO Cross pushed § 87(2)(b) into the glass door, causing him to strike his head. § 87(2)(g)

§ 87(2)(b) alleged that after being handcuffed, PO Cross forcefully pushed him into the glass door of the vestibule and maneuvered him to the floor, causing him to strike his head on the floor. He alleged that PO Cross then punched him in the nose or mouth region, and he felt a second punch from which he could not determine the origin. § 87(2)(b) contended that § 87(2)(b) was punched in the

face two to three times by an officer, and § 87(2)(b) confirmed he was punched in the face but was uncertain how many times.

PO Cross denied pushing § 87(2)(b) taking him to the ground, or punching him in the face, and contended that they inadvertently tripped due to § 87(2)(b)'s sudden turning motion. Sgt. Marku confirmed PO Cross' account of the interaction. However, PO Shen contended that § 87(2)(b) suddenly turned to face PO Cross and PO Cross struck § 87(2)(b) one time in the face while he was rear handcuffed. PO Shen did not recall § 87(2)(b) making any other threatening gestures, such as lurching toward PO Cross, and PO Shen did not see PO Cross bring § 87(2)(b) to the ground.

The video footage depicts § 87(2)(b) slightly turning to face PO Cross and § 87(2)(b) at which point PO Cross lurches him backward into a swinging door, causing § 87(2)(b) to strike his head on the door. While the struggle inside of the vestibule is obstructed in the video evidence, officers' vigorously moving bodies and § 87(2)(b) crouched near the ground can be ascertained clearly. Furthermore, the video footage does not show any evidence of § 87(2)(b) stumbling or "abruptly turning" and PO Cross appears to have full capability of his body, does not appear to lose his footing, and never grasps a door or barrier for support. § 87(2)(b)'s medical records conclude that he had a laceration to his scalp requiring five staples, abrasions to his forehead, swelling to his upper lip, and a laceration to his inner lip.

§ 87(2)(g)

Officers are permitted to use the minimum amount of force necessary to take into custody a violent or resisting individual, Patrol Guide, Section 203-11 (Enc. 2a – 2b).

While PO Cross categorized § 87(2)(b)'s turn as "abrupt," and indicative of "coming at him," and PO Shen noted the turn was "sudden," the video footage portrayed § 87(2)(b)'s movements as a slight non-threatening turn, while he was fully handcuffed. § 87(2)(g)

§ 87(2)(b) Sgt. Marku attributed the circumstances to an inadvertent trip, but this too was disproved by the video footage. While the environment may have been chaotic, § 87(2)(b) exhibited no behavior of active resistance and he was fully handcuffed when PO Cross pushed him, maneuvered him to the floor, and punched him. § 87(2)(g)

Allegation G – Other – PO Daniel Cross intentionally provided a false official statement to the CCRB when he denied using force against § 87(2)(b)

During his CCRB statement, PO Cross denied pushing § 87(2)(b) into a door, punching him, or otherwise using force against him, as he noted that all forceful physical contact between them in the vestibule was inadvertent.

Intentionally making a false official statement is prohibited and will be subject to disciplinary action. NYPD Patrol Guide, Section 203-08 (Enc. 3a). The statement must be proven to have been made, material and intentionally false. Dep't of Correction v. Centeno, OATH Index No. 2031/04, p.4 (2005) (Enc. 4a – 4n).

As discussed above, the investigation determined that PO Cross pushed § 87(2)(b) into the door and punched him in the face based on the video footage and PO Shen's corroborative statement. During his CCRB interview the following exchange, pertaining to the use of force, occurred:

Inv Murray: Prior to him abruptly turning to face you, had you pushed § 87(2)(b) forward at any point?

PO Cross: I was walking him forward, escorting him out of the location.

Inv Murray: Okay, what about a *push* though?

PO Cross: I have no reason to push him if he is handcuffed.

Inv Murray: Okay, on this day did you push § 87(2)(b) forward?
PO Cross: No.

Inv Murray: At any point in the vestibule, did you use your fist to strike § 87(2)(b) in the face?
PO Cross: Absolutely not.

Inv Murray: And did you see Sergeant Marku do this?

PO Cross: No.

Inv Murray: Okay, and now the trip sounds incidental, accidental – was any force – actual, intentional force used in the vestibule area?

PO Cross: No.

During the course of more than three inquiries, PO Cross' responses became progressively more certain that he did not use force against § 87(2)(b)

§ 87(2)(g)

Team: 2

Investigator: _____
Signature _____ Print Diana P. Murray _____ Date _____

Supervisor: _____

_____	_____	_____
Title/Signature	Print	Date

Reviewer: _____

_____ Title/Signature	_____ Print	_____ Date
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Reviewer: _____

Title/Signature	Print	Date



POLICE DEPARTMENT

August 3, 2015

MEMORANDUM FOR: Police Commissioner

Re: Police Officer Daniel Cross
Tax Registry No. 944473
Bronx Court Section
Disciplinary Case No. 2014-12230

The above-named member of the Department appeared before me on June 12, 2015, charged with the following:

1. Said Police Officer Daniel Cross, on or about April 2, 2013 at approximately 0313 hours, while assigned to the 34th Precinct and on duty, in the vicinity of 1455 Saint Nicholas Avenue, New York County, did wrongfully use force against Person A, in that he pushed Person A about Person A's body causing Person A's head to strike a door.

P.G. 203-11 – USE OF FORCE

2. Said Police Officer Daniel Cross, on or about April 2, 2013 at approximately 0313 hours, while assigned to the 34th Precinct and on duty, in the vicinity of 1455 Saint Nicholas Avenue, New York County, did wrongfully use force against Person A, in that he pushed Person A about Person A's body causing Person A's head to strike the ground. *(As amended)*

P.G. 203-11 USE OF FORCE

3. Said Police Officer Daniel Cross, on or about April 2, 2013 at approximately 0313 hours, while assigned to the 34th Precinct and on duty, in the vicinity of 1455 Saint Nicholas Avenue, New York County, did wrongfully use force against Person A, in that he punched Person A about Person A's face. *(As amended)*

P.G. 203-11 USE OF FORCE

The Civilian Complaint Review Board (CCRB) was represented by Nicole Junior, Esq. Respondent was represented by Michael Martinez, Esq.

Respondent, through his counsel, entered a plea of Not Guilty to the subject charges. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

DECISION

Respondent is found Not Guilty of the misconduct charged in Specifications 1, 2, and 3.

SUMMARY OF EVIDENCE PRESENTED

This case involves an arrest at the Lucky Seven Tapas Bar in the early morning hours of April 2, 2013. It is undisputed that Respondent and Sgt. Visar Marku were on routine patrol when they were flagged down regarding a fight that had occurred inside the bar at 1455 Saint Nicholas Avenue in Manhattan. Upon entering the location, the officers were directed to where security already was holding one of the participants in the altercation, Person A. The Sergeant handcuffed Person A, and eventually had Respondent escort the prisoner out of the bar.

There is some dispute as to the pivotal details of what exactly happened as Respondent escorted Person A out of the bar. Person A did not appear to testify at the trial; Counsel for CCRB produced documentation verifying that Person A had been served with a subpoena to appear, but he disregarded that subpoena. In his absence, Diana Murray, an Assistant Supervisor of Investigators with CCRB, testified as to her interview of

Person A. Through Ms. Murray CCRB introduced into evidence an audio copy of Person A's interview. (CCRB Exs. 1A and B).

In his CCRB interview, Person A offered his version of the events of April 2, 2013. According to Person A, he was at the Lucky Seven Tapas Bar with friends when an altercation started. He stated he was not drinking alcohol or smoking that evening. Person A claimed that he heard a commotion in the bar, and when he stood up to look, he "was struck from behind." Person A insisted that he did not throw anything and did not partake in the altercation. Nevertheless, security grabbed him and held him on the floor until the police came.

Once police arrived, Person A was handcuffed. According to Person A, as Respondent was escorting him out, Respondent pushed Person A's face into the double doors. Person A stated that Respondent then "swept" him to the ground, causing Person A to bang the back of his head hard on the floor. Person A said that he was then punched in the face two times, though he wasn't sure if it was only Respondent who punched him or another officer as well. The officers continued to tell him to "shut the fuck up" as they picked him up and brought him to the car.

Person A was taken to [REDACTED] Hospital, where he was treated for the injuries to his head. CCRB moved the medical records into evidence. (CCRB Ex. 3) The records reveal that the patient received staples in his scalp for a small head laceration, and also had abrasions to his head and a swollen lip. There is an indication that the patient had been drinking alcohol; the records note that though he was intoxicated, he was able to answer questions. In the records, Person A describes being in a

fight at a bar, and states that he does not know how he received the laceration on his scalp.

It also was elicited from Ms. Murray's testimony that Person A has several prior convictions. From her search of his criminal history, Ms. Murray learned that Person A has convictions for Criminal Sale of a Controlled Substance, Menacing, Trespassing, and Disorderly Conduct. (Tr. 46)

Respondent, who has eight years on the force, testified that when he and Sgt. Marku arrived at the bar, three security guards were restraining Person A. According to Respondent, Person A appeared "intoxicated and belligerent" as security attempted to keep him under control. (Tr. 93) The sergeant rear-cuffed Person A, and Respondent stayed with the prisoner while the Sergeant continued to investigate inside the bar. Respondent smelled a strong odor of alcohol on his prisoner's breath. (Tr. 105) Person A continued to wiggle around, and Respondent observed a sandwich-sized bag of marijuana on the ground just below the prisoner's hands. Person A denied that it was his marijuana, but Respondent was skeptical of this denial in light of his observations, and as a result his "suspicion was raised" regarding his prisoner. (Tr. 94)

After Sgt. Marku returned, the officers lifted Person A to his feet and began to escort him out of the bar. Respondent testified as to his safety training in such situations: once the prisoner is in his control and custody, his duty is to get the handcuffed prisoner to the patrol car "as easy as possible." Respondent added that in order for this to happen safely, it's important that the prisoner be cooperative and follow instructions. (Tr. 98-99) His goal here was to remove Person A "as fast as possible without hurting him or having him hurt me." (Tr. 102)

As Respondent was walking his prisoner toward the exit, a blond haired woman, identified as Person A's girlfriend, " came close in (the officer's) personal area," which raised further safety concerns for Respondent. (Tr. 98) Respondent testified that as he continued to guide Person A toward the door, Person A abruptly turned toward Respondent, they bumped, and the force of that collision combined with Respondent's forward momentum, propelled them both through the double-doors and onto the ground. (Tr. 96-7) Respondent denied intentionally pushing his prisoner's head into the doors. Respondent also noted that the fact that he and the prisoner were both large men contributed to their falling hard to the ground; he estimated himself at 6'8", 230 pounds, and Person A about 6'3", 240-250 pounds. (Tr. 99) After the fall, Respondent picked the prisoner back up and continued on to the car; Respondent denied ever punching Person A. (Tr.101)

On cross-examination, Respondent acknowledged that originally he did not recall he and Person A falling to the ground; it was only after IAB showed him video footage of the incident approximately two years later that his memory was refreshed. (Tr. 109-10) He also testified that upon first encountering Person A, he did not notice any injuries or blood on his prisoner; only after they were back at the precinct did Respondent notice Person A's lacerations and blood on the back of his head. (Tr. 111-13) On redirect, Respondent added that he was present for an interview of Person A by an Assistant District Attorney, where Person A told the prosecutor that he had been struck in the back of the head in the club prior to being arrested. (Tr. 116) Sergeant Visar Marku testified that he actually did notice blood on Person A's face and head when they first arrived at the bar. (Tr. 80) Otherwise, the Sergeant essentially corroborated Respondent's description

of events, including how an apparently intoxicated Person A continued to struggle as they were escorting him out of the bar, which caused the fall into the vestibule area. (Tr. 84)

Aside from the testimony, there were several additional pieces of evidence to aid the Court in evaluating the incident. CCRB introduced video footage from the bar showing Respondent escorting Person A to the exit. (CCRB Ex. 2) That video, predictably, was interpreted differently by each side. CCRB argues that it shows that Respondent intentionally pushed Person A's head into the door and then "slingshot" him to the ground. Counsel for Respondent counters that Person A was being non-compliant, and as a result he and Respondent fell off-balance through the door.

Also in evidence is video footage from the original bar altercation. (Resp. Ex. C) That footage shows Person A turning his chair to face and stare at another bar patron. Once that patron's back is turned, Person A is seen reaching for some sort of bucket and violently smashing the other individual from behind in his head area. Person A follows that attack by at least twice throwing certain items toward the individual; as he throws one of those items, sparks of fire appear to fly up in the air. Although there is no audio to accompany the footage, Person A does appear to be the aggressor in the altercation, in complete contrast to how he described it to Ms. Murray of CCRB (Tr. 55)

Further, Respondent introduced into evidence a written statement by Person A dated April 2, 2013. (Resp. Ex. A) The statement, written on IAB letterhead, states, "I'm not 100 percent sure that the officer was the person that caused my head injury." The statement is signed by Person A, and witnessed by a Sergeant who signed the document as well.

FINDINGS AND ANALYSIS

N.Y.P.D. officers are responsible for using the proper amount of force appropriate to the circumstances. At the scene of an incident, all members of the service are required to use the "minimum force" necessary for the situation. Patrol Guide section 203-11 provides that excessive force will not be tolerated.

Here, CCRB alleges that Respondent wrongfully used excessive force against Person A as he escorted Person A out of the bar. Without in-court testimony from Person A, CCRB relies primarily on hearsay evidence introduced through Person A's CCRB interview, the medical records of his injuries, and the video footage of Respondent escorting Person A from the bar. Hearsay evidence is admissible in an administrative tribunal, although it certainly is preferable to have first-hand, in-court testimony from an actual witness, where opposing counsel are afforded an opportunity to confront the witness, and the witness' demeanor on the stand can be considered. A case may, though, be proven with hearsay evidence, provided it is found to be sufficiently reliable and probative on the issues to be determined. See *Ayala v. Ward*, 170 A.D.2d 235, 565 NYS2d 114 (1st Dept 1991); *In the Matter of 125 Bar Corp v. State Liquor Authority of the State of New York*, 24 NY2d 174, 299 NYS2d 194 (1969).

Here, the Court does not credit Person A's account of the incident. Person A, himself, did not appear to testify, and there is extensive evidence that contradicts his statement to CCRB. Most glaring is Person A's complete fabrication as to the original altercation at the bar: his description of events to the CCRB investigator, where he insisted he did not throw anything or partake in the altercation, other than being hit in the back of a head with an object, is completely belied by the video footage of the incident.

It is Person A, himself, who is seen striking another individual in the head from behind with some sort of bucket, without any evidence of physical provocation. It is Person A, himself, who is seen throwing additional items from a table at other individuals. Despite his efforts to minimize his culpability, clearly Person A was an active participant, and likely the aggressor, in the fight that occurred in the bar.

Similarly, Person A claimed that he was not drinking alcohol or smoking that evening, but he shows signs of intoxication on the video. Both officers testified he appeared intoxicated, and the medical records indicate he had been drinking as well. Again, Person A's distortion of the truth makes it extremely difficult to credit his account of events inside the bar. Accordingly, the Court finds Person A's hearsay statements to be unreliable and insufficient to sustain CCRB's burden.

In the statement he wrote on April 2, 2013, Person A claimed not to be sure who caused his head injury, further undermining CCRB's efforts to prove their case by a preponderance of the evidence. Sergeant Marku testified that Person A already was bleeding when the officers first arrived, suggesting that the injury occurred during the bar fight. Respondent, though, did not recall seeing any such injuries upon their arrival, which, combined with the video footage of the incident, suggests that at least part of Person A's injuries may have been sustained as he fell to the ground in the vestibule area.

However, even if such is the case, the Court still is not persuaded that CCRB has met its burden of proving that Respondent used excessive force against Person A. Respondent was detailed and consistent in his testimony on the stand. The Court finds that Respondent testified credibly when he stated that he did not deliberately thrust

Person A's head into the door, that he did not deliberately throw him to the ground, and that he did not punch him.

Moreover, the video footage in evidence supports Respondent's version of events: Person A seems unsteady on his feet, possibly from being intoxicated, and appears uncooperative as well as he tries to move in a different direction than the exit doors. The blond-haired woman, Person A's girlfriend, moves close to Respondent, and it appears some words are exchanged as Respondent gestures with his hand for her to move away. As they approach the door, Person A does turn abruptly toward Respondent, or someone else, which results in his back facing the exit door. It appears that Respondent continues to guide a resistant Person A toward the door, intent on getting his prisoner out of the bar as quickly as possible. Person A's upper shoulder-blade area seems to strike the double door, and as Respondent tries to maintain control of his prisoner they appear to lose balance and fall to the ground in the vestibule area. The footage does not convince the Court that Respondent was deliberately smashing Person A into the door and to the ground; rather, it appears to be more a result of Respondent trying to get an uncooperative prisoner out of the bar to a more secure location. The video does not clearly show what happens once they are on the ground, though the Court does not see any evidence in the footage of Person A being punched.

To be sure, Respondent did use a minimal level of force in escorting Person A from the bar, and Person A did appear to fall hard to the ground; but this result was not due to any misconduct on the part of Respondent. Rather, it appears that Respondent acted reasonably, using the minimum amount of force necessary under the circumstances,

as he attempted to escort an uncooperative prisoner safely and efficiently to the patrol car.

Given the totality of the circumstances that Respondent faced inside the bar that evening, the Court finds that Respondent acted as a reasonable officer would have acted in that situation. The Court is not persuaded that CCRB has met its burden of proving, by a preponderance of the evidence, that Respondent used excessive force on Person A in violation of Patrol Guide 203-11. Accordingly, I find Respondent Not Guilty on each of the three specifications.

Respectfully submitted,



Jeff S. Adler

Assistant Deputy Commissioner – Trials

APPROVED

SEP 22 2015

WILLIAM J. BRATTON
POLICE COMMISSIONER